

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

OP.No. 5206 of 2002(T)

PETITIONER:

C.ALEX,RAILWAY CONTRACTOR,SAJI BHAVAN,
ELENJIKKODU,IRUMPANANGADU P.O.,EZHUKON,KOLLAM.

BY ADV. SRI.V.C.JAMES
SRI.SERGI JOSEPH THOMAS

RESPONDENTS:

1. THE GENERAL MANAGER,SOUTHERN RAILWAY,
CHENNAI.
2. THE DIVISIONAL RAILWAY MANAGER,
DIVISIONAL OFFICE,THIRUVANANTHAPURAM.
3. THE EXECUTIVE ENGINEER,SOUTHERN RAILWAY
CONSTRUCTION,THIRUVANANTHAPURAM.
4. THE SALES TAX OFFICER,WORKS CONTRACT AND
LUXURY TAXES,KOLLAM.

R1 TO R3 BY ADV. SRI.K.V.SADANANDA PRABHU,SR.SC.RAILWAYS
SRI.ALEXANDER THOMAS, SC,RAILWAYS

R4 BY G.P. SRI. K.P. PRADEEP

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 14/11/2007 THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER ON CMP 9206 OF 2002 IN OP 5206 OF 2002

DISMISSED

14.11.2007

SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE AGREEMENT DATED 20.3.1998

EXT. P2 TRUE COPY OF PETITION DATED 27.10.2001 SUBMITTED BEFORE THE 4TH RESPONDENT BY THE PETITIONER.

EXT.P3 TRUE COPY OF LETTER NO. 1224 0082/98/99 DATED 12.12.2001 ISSUED BY THE FOURTH RESPONDENT TO THE FIRST RESPONDENT.

EXT.P4 TRUE COPY OF LETTER NO. 1224 0082/98-99 DATED 18.1.2001 OF THE FIRST RESPONDENT TO THE EXECUTIVE ENGINEER, SOUTHERN RAILWAY.

EXT.P5 TRUE COPY OF SNOTICE DATED 16.1.2002 ISSUED TO THE PETITIONER BY THE SALES TAX OFFICER.

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

O.P. NO. 5206 OF 2002

Dated this the 14th day of November, 2007

JUDGMENT

Petitioner is a railway contractor who has filed the O.P. for direction to the Southern Railway to reimburse to him sales tax in accordance with terms of the contract. Having regard to the nature of dispute, I do not think the same can be settled in this proceeding. The provision for reimbursement of sales tax at actuals, though a term of the contract, cannot be enforced in writ proceedings. If Railway fails to reimburse the sales tax the same amounts to breach of contract and the petitioner's remedy is either to go for arbitration if there is provision for settlement of dispute through arbitration or to file civil suit in the matter. Since claim for reimbursement of sales tax is only part of the claim under the contract, there is no scope for settlement in this proceeding. Petitioner is free to approach the civil court or to go for arbitration for claiming reimbursement of sales tax.

O.P. is closed as above.

(C.N. RAMACHANDRAN NAIR)
Judge

